

STIPULATIONS

No stipulations were adopted by the parties for purposes of the issues set forth below.

ISSUES

The claimant and respondent entered into a settlement agreement on September 1, 1994. Despite knowledge of the dispute over payment of an \$86.00 medical bill, the parties failed to specifically address the issue of its payment at the settlement hearing before the Special Administrative Law Judge. At settlement hearing the parties agreed the respondent and insurance carrier would pay the authorized and related medical bills previously incurred for treatment of claimant's carpal tunnel syndrome. After the settlement hearing, claimant filed a Motion for Penalties which was heard on February 16, 1995, by Administrative Law Judge Shannon S. Krysl who found that the respondent and insurance carrier were not liable for the payment of the bill. The Administrative Law Judge did not comment upon or enter an order regarding a request for \$250.00 in attorney fees which claimant made at the hearing. The issues now before the Appeals Board are:

- (1) Are the respondent and insurance carrier responsible for payment of the \$86.00 medical bill?
- (2) Is claimant's attorney entitled to fees for services rendered after the settlement hearing relating to payment of this bill?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Appeals Board finds as follows:

For the reasons expressed below, the Order of the Administrative Law Judge dated February 16, 1995, should be modified.

- (1) As indicated above, this matter comes before the Appeals Board as a result of the parties failing to specifically address at settlement hearing the issue of a disputed \$86.00 medical bill. As a result of that oversight, time has now been expended by Division staff, the parties, the Administrative Law Judge, and this Appeals Board which could have been more judiciously utilized.

This case brings readily to mind the legal maxim *de minimus non curat lex*. We should therefore consider whether the Appeals Board should address at all the issue of whether the medical bill was authorized and related. When the parties settled this case, both counsel were aware that this bill was in dispute; yet they did not specifically address the bill in the settlement, nor did they reserve the issue for later determination. After first obtaining a ruling from the Administrative Law Judge, the parties are now, in effect, asking the Appeals Board to decide for them the question of what did the parties intend when they settled this claim. There obviously was not a meeting of the minds between the parties regarding this bill. We must then consider whether there was a full and final settlement of the claim. One possible disposition of this appeal would be to set aside the settlement and remand the matter for trial. The parties would then have to decide for themselves whether

to litigate the claim or instead enter into a settlement which, in fact, does address all issues.

The Appeals Board declines to adopt that course in this instance. However, we believe counsel should be aware of their obligations with regard to addressing all issues in settlements, and with regard to the use of limited court resources for minor, if not trivial, matters.

The Appeals Board finds the respondent and insurance carrier is responsible for payment of the \$86.00 medical bill incurred with Dr. Morris. Dr. Morris treated claimant and performed left carpal tunnel release surgery in February 1994. He released claimant to return to work in March 1994 and advised claimant he could return as needed. After returning to work for a different employer, claimant developed additional symptoms in his operated hand in close proximity to the surgical site. In June 1994, claimant returned to Dr. Morris to consult with him about these new symptoms. A review of Dr. Morris' office notes indicate the new symptoms may be either related to claimant's preexisting carpal tunnel syndrome or the result of a new injury. In either event, the respondent and insurance carrier are responsible for payment of the bill from that office visit. Because of the nature of the injuries and symptoms involved, it was not unreasonable for claimant to consult his authorized physician to determine whether the new symptoms were related to the carpal tunnel syndrome or the surgery. In this instance, a visit to the doctor to determine whether symptoms are related to the original and initial injury is found to be medical care that is sufficiently related to the treatment of the initial injury that the medical bill for that visit should be paid by the respondent and insurance carrier. There is no issue whether Dr. Morris was authorized. Therefore, under the terms of the settlement agreement, the respondent and insurance carrier are required to pay the \$86.00 bill to Dr. Morris.

We purposely do not address the question whether claimant is entitled to receive a penalty for nonpayment of this bill as that issue was neither raised, nor briefed by the claimant or the respondent.

(2) Claimant is not entitled to attorney fees for the services he rendered in requesting payment of this bill. Although K.S.A. 44-536(g) provides for payment of claimant's attorney fees in certain post-award situations, this is not one of them. The statute reads:

"In the event any attorney renders services to an employee or the employee's dependents, **subsequent to the ultimate disposition of the initial and original claim**, and in connection with an application for review and modification, a hearing for additional medical benefits, or otherwise, such attorney shall be entitled to reasonable attorney fees for such services, in addition to attorney fees received or which the attorney is entitled to receive by contract **in connection with the original claim**, and such attorney fees shall be awarded by the director on the basis of the reasonable and customary charges in the locality for such services and not on a contingent fee basis. If the services rendered under this subsection by an attorney result in an additional award of compensation, the attorney fees shall be paid

from such amounts of compensation. If such services involve no additional award of compensation, the director shall fix the proper amount of such attorney's fees in accordance with this subsection and such fees shall be paid by the employer . . ." (Emphasis added.)

The issue regarding payment of the \$86.00 medical bill was an issue that existed before the disposition of, and was part and parcel of, the initial and original claim. Because of that fact, claimant's attorney is not entitled to attorney fees under K.S.A. 44-536(g). The Appeals Board finds the statute was intended to provide claimant attorney fees in post-award matters involving issues that arise after the disposition of the initial and original claim rather than those issues which are to be determined as a part of the initial claim. To hold otherwise would be to encourage individuals to attempt to bifurcate the determination of issues with hope that the respondent and insurance carrier would ultimately contribute to payment of claimant's attorney fees. Such interpretation could create an administrative nightmare.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Shannon S. Krysl entered in this proceeding on February 16, 1995, should be, and hereby is, modified; that the respondent and insurance carrier are hereby ordered to pay the medical bill of Dr. Harry A. Morris in the sum of \$86.00; and that claimant's request for payment of attorney fees should be, and hereby is, denied.

IT IS SO ORDERED.

Dated this ____ day of August, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Roger A. Riedmiller, Wichita, Kansas
Douglas C. Hobbs, Wichita, Kansas
Shannon S. Krysl, Administrative Law Judge
Philip S. Harness, Director